

# **Exhibit E**

1 IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
 2 FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
 3 CIVIL TRIAL DIVISION

4 HOLLY FISHER, EXECUTRIX OF THE: JULY TERM, 2019

5 ESTATE OF SANDRA REICHART, :

6 Plaintiff, :

7 vs. :

8 AMERICAN INTERNATIONAL :  
 9 INDUSTRIES, individually and as successor-in-interest for  
 10 the CLUBMAN BRAND, and to THE NESLEMUR COMPANY and PINAUD COMPANY, et al., :

11 Defendants. : NO.: 0877

12 - - -

13 Thursday, October 13, 2022  
 Courtroom 675, City Hall  
 Philadelphia, Pennsylvania

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15 BEFORE: THE HONORABLE SIERRA THOMAS STREET, J.

16 - - -

17 JURY TRIAL  
 P.M. SESSION

18 - - -

19 REPORTED BY: Kimberly Wilson, RMR, CRR

20 - - -

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1  
 2 I N D E X

3 P L A I N T I F F ' S E V I D E N C E

WITNESS	DR	CR	RD	RC
Dr. Jacqueline Moline, M.D.	--	5	88	99
Holly Fisher	106	--	--	--

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1 you would want to know what got on the floor if  
 2 you're measuring what went on the floor.  
 3 Q. Can you just agree with me that the more you  
 4 put on the brush, the more likely it is that some  
 5 gets on the floor?

6 THE COURT: Objection sustained.

7 Speculation.

8 Move on to the next question.

9 BY MR. THACKSTON:

10 Q. Now, on direct examination you talked about an  
 11 article that you wrote along with others about  
 12 mesothelioma and cosmetic talc, right?

13 A. Yes.

14 Q. And you wrote this while you were serving as  
 15 an expert witness for plaintiffs and asbestos,  
 16 slash, and cosmetic talc litigation, right?

17 A. I wrote that during the same time frame, yes.

18 Q. And when you got it finished, you testified  
 19 about it, right?

20 A. I was asked questions about it. I testified  
 21 about it, yes.

22 Q. And so the premises of the article is, look,  
 23 there's these 33 cases -- now, let me back up.

24 You're a medical doctor, but you didn't see  
 25 these 33 people in the context of being a treating

1 physician, right?

2 A. Correct. They were all sent to me as part of  
 3 a medical-legal review.

4 Q. These were litigation files that they gave  
 5 you, right? Sent you to by plaintiff's lawyers who  
 6 hired you in litigation, right?

7 A. In some instances I might have met with the  
 8 individuals.

9 Q. This morning you talked about some intimate  
 10 medical details relating to Mrs. Reichart and  
 11 the -- and you wouldn't normally do that, like, out  
 12 on the street, would you?

13 MR. KRAMER: Objection.

14 THE COURT: Grounds?

15 MR. KRAMER: Form. Out on the  
 16 street.

17 THE COURT: What's the relevance of  
 18 that question? Sustained.

19 BY MR. THACKSTON:

20 Q. When you receive medical information in the  
 21 context of litigation, there's been a release by  
 22 the person who filed the lawsuit that says,  
 23 "Because I'm filing a lawsuit over my medical  
 24 condition, I agree that people can use my medical  
 25 information for litigation purposes." Right?

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1 MR. KRAMER: Objection. Outside the  
 2 scope of this witness's expertise. She's not  
 3 a lawyer. She's a doctor. What these  
 4 individuals do with their law firms and how  
 5 the legal process is outside the scope.

6 THE COURT: Overruled.

7 THE WITNESS: My understanding is  
 8 they sign a release and the medical records  
 9 are then provided.

10 BY MR. THACKSTON:

11 Q. When somebody files a lawsuit over their  
 12 medical condition, they sign a release that says,  
 13 "I understand you're going to need to talk about my  
 14 medical information in my lawsuit." Right?

15 A. You're asking me legal questions. But that's  
 16 part of the process, yes.

17 Q. Well, you're writing reports and testifying  
 18 about people's medical conditions. I assume you  
 19 have a comfort level that that's okay in the  
 20 context of litigation when they filed a lawsuit,  
 21 right?

22 A. For their specific case with respect to the  
 23 specific litigation, yes. I would not discuss it  
 24 outside of the specific litigation.

25 Q. And so, you wrote this article and you said

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1 that these 33 cases that I reviewed, these people  
 2 didn't have any other exposure to asbestos, so it  
 3 might have been cosmetic talc, right?

4 A. To the best of my knowledge, they did not have  
 5 any other sources.

6 Q. And then it came to your attention that one of  
 7 them had filed a Workers' Compensation claim  
 8 stating under oath that she was exposed to asbestos  
 9 on the job that had nothing to do with cosmetic  
 10 talc, right?

11 A. I'm aware -- I'm not going to discuss anyone  
 12 in the paper. If you're going to ask me about a  
 13 particular case, I would be happy to talk to you  
 14 about it. I'm not going to discuss any individual  
 15 who might be in the paper.

16 Q. I'm not using anybody's name.

17 A. I'm not discussing anyone in the paper.

18 Q. So let me get this straight, Doctor.

19 MR. THACKSTON: There's  
 20 no objection.

21 THE COURT: Is there an objection?

22 MR. KRAMER: I was just going to  
 23 note for the record the conversation we had  
 24 where I raised this objection initially with  
 25 regard to the appropriateness of discussing

1 individuals that might reveal their identity.

2 THE COURT: The last thing I said  
3 was that I will allow counsel to cross-examine  
4 the witness about these issues.

5 MR. KRAMER: I understand. But I  
6 think it might be going a little bit far  
7 afield. That's why I'm placing my objection  
8 on the record.

9 THE COURT: Overruled.

10 BY MR. THACKSTON:

11 Q. Dr. Moline, I'm not in any way, shape or form  
12 asking you to identify anyone at all. What I'm  
13 asking you is, it came to your attention that one  
14 of the people had filed a Workers' Compensation  
15 claim, right?

16 A. **I was aware that an individual has filed a  
17 Workers' Compensation claim.**

18 Q. And somebody showed you the Workers'  
19 Compensation claim that said, "Under penalty of  
20 criminal law, I affirm that I was exposed to  
21 asbestos on the job." Right?

22 A. **And I was provided with other -- I don't  
23 recall the exact forms that I had, but I was aware  
24 of the ultimate finding that there was no exposure.**

25 Q. Okay. So let's just -- that's what you were

1 talking about on direct when you said, well, there  
2 was a finding by a court that she was wrong. Is  
3 that what you're saying?

4 MR. KRAMER: Objection.

5 Mischaracterizes, Judge.

6 THE COURT: Overruled.

7 THE WITNESS: My understanding is  
8 that somebody filed, but it was not found. Or  
9 there is a dispute whether there was actual  
10 exposure. And my recollection is that the  
11 finding was that there was no exposure.

12 BY MR. THACKSTON:

13 Q. So let me ask you about your scientific  
14 methodology for writing an article then. When you  
15 are reviewing litigation files, and you're basing  
16 your opinion that you're putting in the paper on  
17 allegations that people made in depositions, right?

18 A. **Yes.**

19 Q. Fine. And so if ultimately some court decides  
20 that those allegations are wrong, does that make  
21 that person a liar for saying it?

22 MR. KRAMER: Objection. Calls  
23 for --

24 THE COURT: Sustained.

1 BY MR. THACKSTON:

2 Q. I mean, you're assuming that whatever someone  
3 has said under oath in a deposition is true, right?

4 A. **It's often not just the individual, but there  
5 are other individuals that may provide  
6 corroborating information. So I would look at the  
7 totality of the information.**

8 Q. And you know that because it's a lawsuit that  
9 there's a defendant in the lawsuit who's denied  
10 that that's true, right? They've denied that the  
11 person is entitled to be compensated, right?

12 MR. KRAMER: Objection. Again,  
13 calls for speculation as to the process, what  
14 defendants are thinking and doing.

15 THE COURT: I would agree that you  
16 should rephrase that question. That question  
17 alone does not identify exactly what you're  
18 talking about, even though --

19 BY MR. THACKSTON:

20 Q. On direct examination, over my objection, you  
21 were allowed to answer a question about the effect  
22 of a Workers' Compensation ruling, right? You gave  
23 an opinion about what the effect of a Workers'  
24 Compensation ruling is, right?

25 A. **I was discussing my experience in dealing with**

1 **Workers' Compensation patients, which I have been  
2 dealing with for years. And my understanding of  
3 having patients who have gone through the process  
4 whereby a decision is made that there is or there  
5 is not exposure that led to the disease.**

6 Q. Okay, some kind of adjudication. Some kind of  
7 judicial review of the claim, right?

8 A. **At some point, yes, in the case, unless the  
9 company accepts whatever the condition might have  
10 been.**

11 Q. And so when it was brought to your attention  
12 that this person had made this claim under the  
13 penalty of criminal penalty that they were exposed  
14 to asbestos in a mill, based on the fact that you  
15 think that that was adjudicated, you decided not to  
16 include that fact in your paper, right?

17 MR. KRAMER: Objection as per the  
18 characterization of criminal penalty. Calls  
19 for speculation.

20 THE COURT: Overruled.

21 THE WITNESS: I based the  
22 information on what I had at hand with respect  
23 to my understanding of the exposures the  
24 individual had.

1 BY MR. THACKSTON:

2 Q. And, in fact, the only denial was that the  
3 defendant that she made the claim against denied  
4 that they were liable, right?

5 A. I haven't memorized the entire file that  
6 you're speaking about. I know that there was a  
7 dispute whether there was exposure. And I'm not  
8 quite sure at how far it proceeded or if it was  
9 withdrawn at a certain point.

10 Q. Well, no matter how it ended up, it started  
11 out with someone saying under oath that they were  
12 exposed to asbestos other than cosmetic talc,  
13 right?

14 MR. KRAMER: Objection. What are we  
15 talking about?

16 THE COURT: Overruled. Counsel, you  
17 know exactly what we are talking about. And  
18 you objecting is not going to stop it.

19 THE WITNESS: I'm sorry. Can you  
20 repeat the question?

21 BY MR. THACKSTON:

22 Q. No matter how it turned out, it started out,  
23 the Workers' Compensation claim started out with  
24 the plaintiff saying under oath that she was  
25 exposed to asbestos on the job other than cosmetic

1 talc, right?

2 A. I don't know what -- how the process starts in  
3 the state that this individual lived in, if it was  
4 just the lawyer making an assertion or whether it  
5 was the individual. I do not have a specific  
6 recollection of the rules and regulations since  
7 they're state by state.

8 Q. You have been shown the claim before with the  
9 signature by the husband, right?

10 A. I'm sure you have shown it to me in the past.  
11 I don't -- but it's been years. And the husband is  
12 not the individual. And the individual would have  
13 known the exposure more than a husband.

14 Q. Have you ever done any work for the Graham and  
15 Wallace law firm in Salisbury, North Carolina?

16 A. No.

17 Q. Weren't you a retained expert in the Bell  
18 case?

19 A. I was an expert in the Bell case, but I was  
20 not retained -- I don't recall that I was -- I was  
21 not retained by that firm. I don't know that firm.

22 Q. Okay. So after you wrote this article based  
23 on these litigation cases, and you testified about  
24 these articles on direct examination, and you said  
25 there's no epidemiology -- well, let me back up.

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1 There's no epidemiology suggesting that barbers or  
2 hairdressers are at an increased risk for  
3 mesothelioma, right?

4 A. No such study has yet been conducted. It  
5 doesn't mean that it isn't true. But there has not  
6 been a specific study that I have seen that is  
7 specifically looking at barbers and hairdressers.

8 Q. Well, we'll get to that. Okay.

9 And so you said that my study is significant  
10 because I got these 33 people who were only exposed  
11 to cosmetic talc and they got meso, right?

12 A. I said my study was significant because it was  
13 pointing to cosmetic talc as a cause of  
14 mesothelioma and alerting physicians that they  
15 should take a history. If you read the conclusion,  
16 that's the point of this article.

17 Q. After you testified about your article to  
18 juries, if somebody who's cross-examining you wants  
19 to make sure that that's right, that in those 33  
20 cases there was no other exposure -- alleged  
21 exposure to asbestos, you take the position that  
22 you won't disclose the names of any of those cases,  
23 right?

24 A. I take that position regardless of what  
25 situation I'm in. I do not disclose the names of

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1 individuals. That is standard medical practice.  
2 That is standard research practice. I am not doing  
3 anything different from any colleague that I know  
4 at any institution.

5 MR. THACKSTON: Object to  
6 responsiveness about what colleagues do.  
7 THE COURT: Overruled.

8 BY MR. THACKSTON:

9 Q. Well, let's take that a step at a time. So  
10 you're not they're treating physician. You have no  
11 physician-patient relationship with any of the 33,  
12 right?

13 MR. KRAMER: Objection, Judge. This  
14 is now going into questioning regarding  
15 whether or not or how she may -- the reason  
16 why she's not going to be revealing these  
17 individuals. And when we had this  
18 conversation, counsel said he was not --

19 THE COURT: I agree, he did say  
20 that.

21 MR. THACKSTON: I'm sorry, Your  
22 Honor?

23 THE COURT: You did say that you  
24 were limited to the issue that you have  
25 already touched. Sustained.

1 BY MR. THACKSTON:

2 Q. The position -- well, Northwell, your  
3 employer, is the one that has the information,  
4 right?

5 MR. KRAMER: Same objection, Judge.

6 THE COURT: What's the purpose of  
7 the question?

8 MR. THACKSTON: I'm sorry, Your  
9 Honor?

10 THE COURT: What's the purpose of  
11 this question, Counsel?

12 MR. THACKSTON: I'm so sorry?

13 THE COURT: What is the purpose of  
14 this question?

15 MR. THACKSTON: Oh. The purpose of  
16 the question is that the information has  
17 already been released by Northwell.

18 THE COURT: Okay. Well, why don't  
19 you ask that.

20 BY MR. THACKSTON:

21 Q. Northwell has already produced the records  
22 that shows that Mrs. Bell was a member of your  
23 study, right?

24 A. I -- what my organization might have done, I  
25 will not discuss. I will not discuss names of the

1 individuals in my paper.

2 Q. And you testified earlier about Workers'  
3 Compensation orders. Have you read -- you're aware  
4 that there's a 40-page order from a federal court  
5 saying that your position that you can't talk about  
6 those people is wrong, right?

7 MR. KRAMER: Objection, Judge.

8 THE COURT: Sustained.

9 BY MR. THACKSTON:

10 Q. Have you read that opinion yet?

11 MR. KRAMER: Objection.

12 THE COURT: Sustained.

13 BY MR. THACKSTON:

14 Q. All right. In the denial --

15 MR. THACKSTON: May I approach, Your  
16 Honor? May I display the denial that she's  
17 talking about?

18 MR. KRAMER: We object, Your Honor.

19 THE COURT: Denials of?

20 MR. THACKSTON: The last question.

21 THE COURT: Can you come over here?

22 I don't know what you're talking about.

23 BY MR. THACKSTON:

24 Q. The only denial in that Workers' Compensation  
25 claim -- I'm going to represent to you that my

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1 information is the only denial is the defendant  
2 saying, "We deny the claim."

3 Are you aware of a judicial order finding that  
4 Mrs. Bell's Workers' Compensation claim was  
5 unfounded?

6 MR. KRAMER: Same objection.

7 THE COURT: Overruled.

8 THE WITNESS: My understanding was  
9 that there was a dispute and then either the  
10 case was withdrawn or there was a decision. I  
11 may be misremembering, but I know it did not  
12 go any further than that. That there was a  
13 dispute that there was any exposure. I  
14 thought it went and either a judge made that  
15 determination or the case was withdrawn at  
16 that point. And no further action was taken.  
17 So that's my recollection. I don't know.

18 BY MR. THACKSTON:

19 Q. Would you want that shown to the jury, if  
20 there is such a thing, would you want that shown to  
21 the jury in this case to back you up on that?

22 A. Which thing?

23 Q. If there is any such thing as an order finding  
24 that Mrs. Bell's Workers' Compensation claim was  
25 unfounded, would you want to jury to see that in

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1 this case?

2 A. We're not here talking about Mrs. Bell. We're  
3 here talking about Mrs. Reichart. I would like the  
4 jury to hear about Ms. Reichart and not about  
5 another case.

6 THE COURT: Well, since I'm going to  
7 decide what the jury hears, objection  
8 sustained on that question. If you have  
9 something that you want to approach the  
10 witness with, you may approach the witness  
11 with.

12 The reason why you're being asked  
13 about Ms. Bell was because she's part of your  
14 study. So it's not totally irrelevant.

15 Next question.

16 BY MR. THACKSTON:

17 Q. And I happen to know something about the Bell  
18 case because I was involved in it. For the other  
19 32 cases, you haven't released any identification  
20 information on those 32 cases either?

21 MR. KRAMER: Objection, Your Honor.

22 MR. THACKSTON: It's the last  
23 question.

24 MR. KRAMER: I still object to it.  
25 It could be three questions from the end.

1 THE COURT: It's asked and answered.  
 2 I mean, she said she --

3 MR. THACKSTON: Okay.

4 THE COURT: Sustained, Counsel.

5 MR. THACKSTON: Okay.

6 BY MR. THACKSTON:

7 Q. Now, Doctor, one of the things that your  
 8 article -- your article says that there were -- was  
 9 it three hairdressers in your study?

10 A. Yes.

11 Q. Okay. And is this your article that I have on  
 12 the screen now?

13 A. I'm sorry, I didn't hear what you said.

14 Q. Is this your article that I have up on the  
 15 screen?

16 A. Yes.

17 Q. And one of the things you say that's  
 18 highlighted over here on the right is that, "The  
 19 high prevalence of unexplained or idiopathic  
 20 mesothelioma among women necessitates further  
 21 inquiry into the potential non-occupational  
 22 exposures such as exposure to asbestos contaminated  
 23 talcum powder." Right?

24 A. Yes.

25 Q. So you note the -- you note the occupations of

1 a few of these people. One of the parts of the  
 2 paper deals with what you call fiber burden  
 3 studies, right?

4 A. There were six cases that had tissue  
 5 evaluated.

6 Q. It says -- your article says, "While fiber  
 7 burden studies are rarely undertaken in the course  
 8 of clinical treatment, and they're used primarily  
 9 for medico-legal purposes, the finding of various  
 10 fibers in the lung tissues can provide guidance on  
 11 potential prior asbestos exposure, et cetera"  
 12 Right?

13 A. Yes.

14 Q. Do you know whether there has been any fiber  
 15 burden analysis done of Mrs. Reichart's tissue?

16 A. I haven't seen any.

17 Q. Now, you reference in your papers something  
 18 called a mesothelioma registry?

19 A. Can you point me to what you're talking about?

20 Q. Do you remember mentioning the Italian  
 21 mesothelioma registry?

22 A. Yes.

23 Q. And you say that -- you say, quote, "Typically  
 24 patients with mesothelioma will be simply asked  
 25 whether they worked with or around asbestos, rather

1 than being provided with a listing of potential  
 2 sources of the types of exposure in which one might  
 3 encounter asbestos. Cases of mesothelioma among  
 4 hairdressers characterized as idiopathic, also  
 5 underscore the contribution of an incomplete  
 6 exposure history. The potential failure to  
 7 identify use of talcum powder exposure in their  
 8 work would prevent the linking of occupational  
 9 exposures to asbestos in their mesothelioma. In  
 10 our paper, there were three female hairdressers who  
 11 regularly used talcum powder in their work."

12 Right?

13 A. Correct.

14 Q. But then you say, "It was unclear from any of  
 15 the histories noted in the medical records that  
 16 these women were asked if they used talcum powder  
 17 as part of the haircutting process." And you say,  
 18 "In a report from the national mesothelioma  
 19 registry of Italy" -- now, that's like a listing of  
 20 all the mesothelioma cases in Italy, right?

21 A. Yes.

22 Q. "Staff noted a cluster of mesothelioma due to  
 23 unknown exposure among a hairdressers, but they  
 24 examined hairdryer use as a potential exposure."  
 25 Right?

1 A. Correct.

2 Q. Because hairdryers at one time contained  
 3 asbestos, right?

4 A. Some of them might have, not all of them.

5 Q. And they have a fan in them that blows air  
 6 through them, right?

7 A. I'm not a hairdryer expert.

8 Q. You're not aware of whether a hairdryer has a  
 9 fan in it?

10 A. I'm not going to comment on the mechanics of a  
 11 hairdryer.

12 Q. And so in your article you're saying there's  
 13 no other possible exposure to asbestos. But then  
 14 you mention hairdressers. And then you cite an  
 15 article that says, a source of asbestos exposure to  
 16 hairdressers could be hairdryers. Right?

17 THE COURT: Can you put that back  
 18 up, please? There's no objection, but you  
 19 didn't read the complete sentence in there.

20 MR. THACKSTON: Only examine  
 21 hairdryer use as a potential exposure. No  
 22 discussion of the occupational use of talcum  
 23 powder. Footnote 51.

24 THE COURT: If you're going to read  
 25 to the jury, read completely every word.